

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No. 6067 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil judge
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GANPATBHAI GORDHANBHAI PARMAR - Petitioner(s)

Versus

GULABBHAI NANJIBHAI & 2 - Respondent(s)

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Appearance :

MR HEMANG R RAWAL for Petitioner(s) : 1,
RULE SERVED for Respondent(s) : 1, 3,
MR SK BUKHARI for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 12/04/2007

ORAL JUDGMENT

1. In this petition, the petitioner original plaintiff has challenged the legality of an order dated 4th January, 2006 passed by the

Presiding Officer, Fast Track Court No.9, Bharuch in Misc. Civil Appeal NO.2/2005.

2. Shortly stated facts leading to the petition are as follows :

2.1 The petitioner was plaintiff no.2 in regular civil suit no.80/2003 filed before the learned Civil Judge(JD), Aamod, wherein it was prayed inter-alia for declaration that defendant no.1 has no right to sell the suit premises and that the sale deeds entered into by the defendant no.1 in favour of defendant no.2 be declared as null and void.

2.2 Along with the suit, plaintiffs had also prayed for interim injunction. This application came to be allowed by the trial Court by an order dated 6th December, 2004.

2.3 Respondent no.1 and 2 being aggrieved by the said order of trial Court preferred Misc. Civil Appeal before the District Court. The District Court by impugned order allowed the appeal and set aside the order passed by the trial Court.

3. In the impugned order, the District Court was of the opinion that the suit only for declaration would not be maintainable as held by the Apex Court in the case of **Ram Saran and another v.**

Smt. Ganga Devi reported in AIR 1972 Supreme Court 2685. The District Court was of the opinion that the suit itself is not being maintainable, the plaintiff has no prima facie case and that therefore, no interim injunction could have been granted. Only on this short ground, the appeal was allowed and the interim protection granted by the trial Court in favour of the plaintiffs was set aside.

4. Having heard learned advocates appearing for the parties, I find that order passed by the District Court cannot be sustained. First and foremost it needs to be noted that the suit filed by the plaintiffs was not for simple declaration. In fact, the plaintiffs have prayed for quashing and setting aside the sale deed by respondent no.1 in favour of respondent no.1. In the above-mentioned case i.e. **Ram Saran and another v. Smt. Ganga Devi** (supra), the facts were vitally different. The Apex Court was considering a case where the defendant was in possession of the suit property and the plaintiff without seeking restoration of possession merely sought declaration of ownership of the suit property. Under such circumstances, it was observed that suit is not maintainable. In the present case, as noted earlier, the plaintiffs had prayed for a specific relief for quashing and setting aside the sale deed.

5. District Court therefore, erred in holding that the suit is not maintainable at all. Since the Appellate Court has not considered other aspects of the appeal, even while setting aside the impugned order, proceedings are remanded to the District Court for fresh consideration of the Misc. Appeal on merits which may be done within a period of four months from the date of receipt of a copy of this order.

6. With these directions, the petition is allowed in part. Rule made absolute in the above terms. No costs.

(Akil Kureshi, J.)

(raghu)